

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

THE STATE OF TEXAS, et al,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Case No.:
	§	4:20-cv-00957-SDJ
GOOGLE, LLC,	§	
	§	
Defendant.	§	

MOTIONS TO DISMISS  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SEAN D. JORDAN  
UNITED STATES DISTRICT JUDGE

Thursday, April 18, 2024; 1:37 p.m.  
Plano, Texas

APPEARANCES OF COUNSEL:  
(Continued on page 2.)

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1 quasi-sovereign or sovereign standing.

2 MR. KELLER: Absolutely, Your Honor. There has to  
3 be injury in fact. We've --

4 THE COURT: Right.

5 MR. KELLER: -- talked about *parens patriae* and  
6 injury to a quasi-sovereign interest. I think the Article  
7 III head of jurisdiction that they're inviting us to  
8 entertain speaks to sovereign interest. I will concede for  
9 the Court there's a lot less precedent that's on point there.  
10 We don't have something squarely on point for sovereign  
11 standing. I don't think they have anything on point for  
12 sovereign standing. So the safer course is *parens patriae*.

13 THE COURT: And let me ask you, on *parens patriae*,  
14 because I'm going to get to sovereign standing with you, you  
15 had mentioned that, you know, you haven't really seen a case  
16 that supports their theory. You said really you just would  
17 be looking at the dissent in the *Georgia* case. But what  
18 about -- this is a case cited by the other side from 2017,  
19 Ninth Circuit -- the *Missouri v. Harris* case? That's a case  
20 where the Ninth Circuit rejects *parens patriae* standing, and,  
21 you know, it's from 2017.

22 And I would like to get your thoughts on that case  
23 because that's a case where -- I'm sure you're well familiar  
24 with the facts, but basically you had California had passed  
25 legislation about what kinds of eggs could be sold in

1 But for constitutional injury purposes, we've done more than  
2 we need to, certainly, on the pleading.

3 THE COURT: All right. You can continue.

4 MR. KELLER: I think that I've exhausted my  
5 prepared remarks, Your Honor. I'm happy to talk about  
6 sovereign standing some more, if you would like. I've  
7 admitted that there is a dearth of case law on that, so  
8 *parens patriae* I think is the easier ground. But --

9 THE COURT: Let's talk about sovereign standing  
10 because this comes back to the point that was made by  
11 Mr. Mahr, meaning he focused a little more on *parens patriae*,  
12 but the *Harrison* case, you know, lays out very clearly the  
13 test for sovereign standing. And it seems problematic for  
14 the States under that test because the only part of the test  
15 that it seems like the States could meet could be something  
16 about being able to enforce their own laws. And I don't know  
17 that I see that here. In other words, I look at the test in  
18 *Harrison*, which is very clear, and I match that up with  
19 what's at issue in this case, and it looks like it's  
20 problematic for the States.

21 And so my question to you is in light of the  
22 standards that are clearly sovereign in *Harrison*, how do you  
23 get -- how do the States fit into that here to get the  
24 sovereign standing?

25 MR. KELLER: I'll give you my best shot at it, Your

1 Honor. So *Massachusetts v. EPA* from the Supreme Court,  
2 leaning heavily on Justice Kennedy's concurring opinion from  
3 *Lujan*, says that "Congress has allowed to depart from the  
4 common law default for injury in fact. It can create  
5 injuries that wouldn't have been previously recognized." And  
6 I think the default is certainly that when there's a  
7 violation of federal law, it's for the federal sovereign, an  
8 Article II executive branch officer, to go enforce that  
9 violation. But the antitrust laws are unique in that  
10 Congress expressly desired for the states to play a crucial  
11 role in the enforcement of the antitrust laws and to address  
12 violations of the antitrust laws. And this case is a good  
13 illustration as to why.

14 The States here are the ones who led the  
15 investigation. They filed the complaint. They largely  
16 survived a motion to dismiss. And then the United States  
17 jumped in and said, yeah, this is a really good piece of work  
18 that you've done. We're going to copy you and go to  
19 Virginia. And I am casting no aspersions. We're thrilled  
20 that the United States has come along for the ride and has  
21 recognized the harm that Google is causing to markets, but  
22 the States did the leg work for that at Congress's  
23 invitation.

24 And so where you have Congress under *Massachusetts*  
25 *v. EPA* inviting the states to enforce federal law, and you

1 have precedent going all the way back to *Testa v. Katt* saying  
2 that a violation of federal law is a violation of state law  
3 because federal law under the supremacy clause is the law of  
4 the state, I think in that unique confluence of situations,  
5 plus Congress saying exclusive federal jurisdiction, we can't  
6 file our federal antitrust claims in state court, they can  
7 only be filed in an Article III tribunal, I think all of that  
8 suggests that the States do have a sovereign injury.

9 THE COURT: All right. Thank you, Mr. Keller.

10 MR. KELLER: Thank you, Your Honor.

11 THE COURT: Mr. Mahr?

12 MR. MAHR: Just a few comments, Your Honor.

13 Certainly, if they want to bring a diversity case before the  
14 Supreme Court, they can do that.

15 And I'm focused on this case and the idea that if  
16 there is no on-point precedent, it's because this is such a  
17 unique situation. And they've got something else that was  
18 remarked upon by the *Harrison* court, I think it was, that  
19 that says something about the whether they said an interest  
20 or not. And this is a unique case in that it's a federal  
21 claim being used to get into federal court to bring these 17  
22 state DTPA claims on, seeking only redundant injunctive  
23 relief -- nothing else under the federal antitrust laws --  
24 when there are private cases in the Southern District of New  
25 York, many of them seeking the exact same relief on behalf of